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IN THE
Supreme Court of the United States
October Term, 1952

No. 617

DISTRICT OF COLUMBIA,

v.

JOHN R. THOMPSON COMPANY, INC.

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICUS CURIAE**

THURGOOD MARSHALL,
ROBERT L. CARTER,
DAVID E. PINSKY,
*Counsel for the N.A.A.C.P. Legal Defense
and Educational Fund, Inc.*

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*To the Honorable, the Chief Justice of the
United States and the Associate Justices
of the Supreme Court of the United States:*

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., pursuant to Rule 27 of the Rules of the Supreme Court of the United States, moves for leave to file a brief as *amicus curiae* in the case of *District of Columbia v. John R. Thompson Company Inc.*, No. 617 in this Court.

I. Consent to file such brief has been requested of the parties. The District of Columbia granted consent. The John R. Thompson Company, Inc., has refused consent.

II. Movant is a national organization engaged in combatting racial discrimination in the United States. One of its principal purposes is to secure judicial recognition and enforcement of federal, state and local enactments prohibiting discrimination based on race or color.

Each of the 280,000 Negroes residing in the District of Columbia has a direct personal stake in the outcome of

this case) The Equal Service Acts of 1872 and 1873 gave all persons the right to receive the essential public services provided by hotels, restaurants, barber shops and other places of public accommodation without discrimination on account of race or color. If the decision of the court below invalidating these Acts is upheld, Negro residents particularly will lose vital and precious personal rights.

The impact of this decision on Negroes residing outside the District of Columbia will be equally as great. The District of Columbia, the seat of our government, attracts innumerable visitors who come to observe the processes of democratic government in action and to see the monuments and memorials which symbolize our history. As travellers, they are dependent on hotels and restaurants for lodging and food. Unless they can be assured such essential services, their privileges as citizens to visit the seat of our government will continue to be seriously abridged.

As vital as the direct effect of this decision will be, its indirect repercussions will be even more significant. The District of Columbia symbolizes American democracy. So long as racial discrimination in places of public accommodation is sanctioned by law in the heart of the nation, efforts to eliminate it in other areas will necessarily encounter stiff resistance. Once it is clear, however, that racial discrimination in our capital has no legal warrant, the great mass of national opinion seeking to eliminate racial barriers will be swelled with new moral strength and vigor. Thus, the elimination of racial discrimination in places of public accommodation in the District of Columbia is especially significant to America's progress toward full equality for all persons.

III. Movant has not seen the briefs on the merits in this Court and it is of the opinion that these have not yet been submitted. However, it does not believe that the following questions of law will be adequately presented.

A. Movant does not believe that the parties, in dealing with the law with respect to municipal corporations, will give sufficient attention to the public policy considerations which favor local governmental effort toward the elimination of racial discrimination and the broad national policy against racial discrimination.

1. The power of local communities to deal with the problems of racial discrimination on a local level is rendered extremely questionable in the light of the decision of the Court of Appeals. Until now the validity of local enactments in the field of civil rights has never been seriously questioned. In recent years, many communities have attempted to deal with various facets of racial discrimination by the enactment of local ordinances. Fair employment practice ordinances are now in effect in Chicago, Minneapolis, Cleveland, Youngstown, Philadelphia, Milwaukee, and many other cities, thus insuring to hundreds of thousands of Negroes the right to be free from discrimination in employment. The validity of these ordinances has suddenly become suspect in the light of decision of the Court of Appeals. While their legality is a matter of state law, the decision of the court below stands as a formidable precedent. Moreover, the status of territorial acts enacted in Alaska, Puerto Rico, and the Virgin Islands prohibiting racial discrimination in places of public accommodation now becomes uncertain. If this decision stands, much of the substantial grass roots progress in eliminating racial discrimination will be seriously imperiled.

2. In deciding that the Legislative Assembly for the District of Columbia had no power to enact the Equal Service Acts of 1872 and 1873, the Court below distinguished the authorities which hold that ordinances requiring segregation are within the bounds of municipal power. This distinction is predicated on the ground that such ordinances are in accord with custom and, hence, necessary to the preservation of peace and order. Movant believes that

this rationale is unsound and extremely prejudicial to the rights of all minorities, for local custom may often be in conflict with the rights of a minority and even the public policy of the state at large.

The theory of the Court below imports into the law of municipal corporations a new and confusing doctrine. If it prevails, the validity of anti-discrimination ordinances may depend on a factual determination as to whether they are in accord or in conflict with local custom. Movant does not believe that the full effect of this theory on civil rights generally will be adequately explored by the parties. Moreover, movant does not believe that the parties will give adequate consideration to the broad national policy against racial discrimination of every kind.

B. A majority of the Court of Appeals did not concur in the opinion of Chief Judge Stephens. As a result, the separate concurring opinion of Judge Prettyman takes on added significance. The position of Judge Prettyman is that, assuming the Legislative Assembly had the power to enact the Equal Service Acts, they were, in effect, municipal ordinances which have now lost all force and effect through abandonment and non-user. Ordinances and statutes protecting minority rights may often be frustrated by apathy or even hostility on the part of some law enforcement officials. Under the theory set forth in the concurring opinion below, such prolonged apathy or hostility may result in nullification of the enactment.

Movant does not believe that the impact of this doctrine on the rights of Negroes generally and its total ramifications will be fully presented. And it does not believe that the parties, in dealing with this issue, will give adequate consideration to the broad national policy against racial discrimination of every kind.

IV. Movant submits that the above considerations are relevant to the issues at the bar and to the particular holding which may emanate from this Court.

WHEREFORE MOVANT moves for leave to file a brief herein as *amicus curiae*.

Respectfully submitted,

THURGOOD MARSHALL,

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